



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,440	10/07/2003	Ken Shinomiya	D-1493	3665

32628 7590 11/02/2005
KANESAKA BERNER AND PARTNERS LLP
SUITE 300, 1700 DIAGONAL RD
ALEXANDRIA, VA 22314-2848

EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT PAPER NUMBER

3727

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/679,440		Applicant(s) SHINOMIYA, KEN	
	Examiner Niki M. Eloshway		Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 12 August 2005.

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1 and 3-8 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1 and 3-7 is/are rejected.

7) ☒ Claim(s) 8 is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

 a) ☐ All b) ☐ Some * c) ☐ None of:

 1. ☐ Certified copies of the priority documents have been received.

 2. ☐ Certified copies of the priority documents have been received in Application No. _____.

 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____

4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 3-7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,499,785 in view of Brent (U.S. 6,596,983) and Thomas et al. (U.S. 6,123,134). U.S. Patent No. 6,499,785 discloses the claimed invention except for the drive means. Brent teaches that it is known to provide a receptacle with a drive means for the retractable lid. Thomas et al. teaches that it is known to provide a drive means with multiple gears. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the receptacle of U.S. Patent No. 6,499,785 with a drive means, as taught

by Brent, having multiple gears, as taught by Thomas et al., in order to easily move the lid from one position to another.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brent (U.S. 6,596,983) in view of Thomas et al. (U.S. 6,123,134). Brent teaches a receptacle 27, 26 having a box member comprising element 27, a guide rail (disclosed in col. 10 lines 46-49), a sliding lid 2, a housing portion to receive the door (figure 4 and col. 11 lines 19-27) and drive means 3. The torsion spring is discussed in col. 5 lines 20-32. The damper is discussed in col. 5 lines 14-19. Brent does not teach a second gear and the spring engaging the second gear. Thomas et al. teaches that it is known to provide drive means with multiple gears and a torsion spring engaging the second gear. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the receptacle of Brent with multiple gears and the torsion spring engaging the second gear, as taught by Thomas et al., in order to allow the lid to move more easily.

5. Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawahito et al. (U.S. 5,295,605) in view of Thomas et al. (U.S. 6,123,134). Kawahito et al. teaches a receptacle having a box member X, a guide rail 7, a sliding lid Y, a housing portion shown at B in figure 3, and a drive means disclosed in col. 4 lines 22-30. The locking means is shown in figures 10 and 11. Kawahito et al. does not teach a second gear and the spring engaging the second gear. Thomas et al. teaches that it is known to provide drive means with multiple gears and a torsion spring engaging the second gear. It would have

Art Unit: 3727

been obvious to one having ordinary skill in the art at the time the invention was made to provide the receptacle of Kawahito et al. with multiple gears and the torsion spring engaging the second gear, as taught by Thomas et al., in order to allow the lid to move more easily.

Allowable Subject Matter

6. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment filed August 12, 2005.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3727

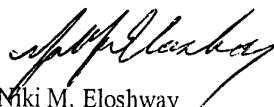
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is 571-272-4538. The examiner can normally be reached on Thursdays and Fridays 8 a.m. to 4 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

nme


Niki M. Eloshway
Examiner
Art Unit 3727


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER